United Nations

A/HRC/32/44/Add.2

General Assembly

Distr.: General
4 August 2016

Original: English

Human Rights Council
Thirty-second session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to the United States of America*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on the issue of discrimination against women in law and in practice on its visit to the United States of America, conducted from 30 November to 11 December 2015. The report describes the situation regarding gender equality and the human rights of women in the country and analyses achievements and challenges. It examines the legal, institutional and policy framework for promoting equality and the participation and empowerment of women in economic, social, political and public life, with particular attention to women victims of multiple forms of discrimination. The Working Group presents its recommendations for further progress in eliminating discrimination and promoting equality.

* The present report was submitted after the deadline in order to reflect the most recent developments.

GE.16-13535(E)

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** Circulated in the language of submission only.

I. Introduction

A. The visit

1. The Working Group on the issue of discrimination against women in law and in practice visited the United States of America from 30 November to 11 December 2015 at the invitation of the Government. The Working Group met with various concerned stakeholders in Washington, D.C., Austin and McAllen (Texas), Montgomery and Lowndes County (Alabama) and Salem and Portland (Oregon). The experts wish to thank the federal and state authorities as well as civil society organizations for their assistance in the organization of this visit.

2. In Washington, D.C., the Group met with representatives of the Departments of State, Labor, Health and Human Services, Education, Justice, Homeland Security and Housing and Urban Development; the White House Council on Women and Girls; the White House Advisor on Violence against Women; the Equal Employment Opportunity Commission; and the Office of Personnel Management. The Working Group also met with members of Congress, a judge of the Superior Court of the District of Columbia and a member of the National Association of Women Judges. In Austin, the Working Group met with representatives of the Commission for Women, the Office of the Speaker of the Texas House of Representatives and state trial judges. In McAllen, it met with the office of the Assistant City Manager. In Montgomery, it met with the Lieutenant Governor, a judge of the Middle District Court and a legislator. In Salem, it met with the Attorney General and the Office of Child Care. In Portland, it met with a District Court judge and the Oregon Commission for Women, including the Commissioner.

3. During its visit, the Working Group met with numerous non-governmental organizations, visited the Coffee Creek Penitentiary (Oregon), health centres, abortion clinics, childcare centres and relief nurseries. The Working Group would like to express its sincere gratitude for the exceptional level of cooperation and support extended by civil society during the visit.

B. Context

4. The visit of the Working Group took place at a moment when the political rhetoric of some of the candidates for the presidency in the upcoming elections included unprecedented hostile stereotyping of women; when there were increasingly restrictive legislative measures at the state level and violent attacks to prevent women from exercising their rights to reproductive health;[1] and when there was a significant and disparate worsening of the economic situation of women, in particular women of colour.

5. The Working Group acknowledges the commitment of the United States to liberty, so well represented by the Statue of Liberty, which symbolizes both womanhood and freedom. Nevertheless, in the global context, women in the United States do not take their due place as citizens of the world's leading economy, which has one of the highest per capita incomes. In the United States, women fall behind as regards their public and political representation, their economic and social rights and their health and safety protections.

[1] On 27 November 2015, a gunman attacked a Planned Parenthood clinic in Colorado. Three people were killed and several others injured.

6. Coming as it did at a time when the economy already had a high level of socioeconomic inequality, the global economic crisis further increased economic insecurity for the middle and lower deciles of the population and had a significantly adverse impact on women, in particular women of colour.[2] Government recovery policies to boost the economy resulted in decreased expenditures on critical social protection programmes, many of which were essential for women.

7. The experts are fully aware of the diversity of the United States and of its political and legal framework, which combines federal and state legislation. Accordingly, the Working Group, rather than reviewing multitudinous provisions, and in view of the word limit on documents, comprehensively seeks to extract the key features of national policy, selected examples of state policy, the most recent trends in women's political, civil, social and economic situation and the achievements and obstacles encountered in promoting gender equality.

II. Legal, institutional and policy framework for women's equality and human rights

A. Legal framework

1. Ratification of conventions at the international and regional levels

8. The United States ratified the International Covenant on Civil and Political Rights (1992), the International Convention on the Elimination of All Forms of Racial Discrimination (1994), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1994) and the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict (2002).

9. The Working Group deeply regrets that the United States has not ratified the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol. In 2010 and 2015, in the framework of the universal periodic review, the Government committed to ratifying the Convention but has not yet done so. The Working Group notes that resistance to ratification of the Convention reflects, inter alia, the opposition of a powerful sector of society to the Convention's formulation of women's international human right to equality. The United States is one of only seven countries in the world which have not ratified the Convention. Even in the absence of ratification, many of the Convention standards are entrenched, inter alia, in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights and are hence binding on the United States. Nevertheless, the Working Group is of the unreserved opinion that ratification of the Convention is crucial, on both the domestic and the global level, in order to confirm the commitment of the United States to substantive equality for women in all spheres of life. At the domestic level, ratification is essential in order to provide all women in the country with "missing" rights and protections guaranteed under the Convention, such as universal paid maternity leave, accessible reproductive health care and equal opportunity in standing for political election. The Working Group welcomes in this regard the initiatives undertaken by

[2] See also the statement to the media by the Working Group of Experts on People of African Descent on its visit to the United States, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17000&LangID=E.

"Cities for CEDAW", which has started a process of incorporating Convention principles at the local level.

10. The Working Group also deeply regrets that the United States has not ratified other major international and regional human rights instruments that have a direct impact on the rights of women, such as the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará". It further regrets that it is not party to the Equal Remuneration Convention, 1951 (No. 100), the Workers with Family Responsibilities Convention, 1981 (No. 156), the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Maternity Protection Convention, 2000 (No. 183) and the Domestic Workers Convention, 2011 (No. 189) of the International Labour Organization (ILO).

2. Main achievements in prohibiting discrimination and violence against women

11. The experts recognize the very significant protection for women's rights under federal legislation and under the Constitution and greatly appreciate landmark decisions, in particular of the Supreme Court,[3] which have created benchmarks in prohibiting sex discrimination. They note, in particular, the following.

Employment rights

12. The Equal Pay Act of 1963 requires that men and women in the same workplace be given equal pay for equal work.

13. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination, including sexual harassment, based on race, colour, religion, sex or national origin by employers with 15 or more employees.[4]

14. The Pregnancy Discrimination Act of 1978, amending Title VII, prohibits sex discrimination on the basis of pregnancy and clarifies that employment discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes sex discrimination under Title VII.[5]

15. The Family and Medical Leave Act (1993) provides employees with the right to take unpaid, job-protected leave of 12 workweeks in a 12-month period, including for the birth of a child and to care for the newborn, within one year of the birth.

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[3] See www.aclu.org/files/interactive/womensrights_scotus_0303a.html#00.

[4] While the Equal Pay Act is limited to jobs within the same workplace, Title VII does not have this limitation. In 1981, four female prison guards sued Washington County in Oregon under Title VII for paying them less than male prison guards: in *County of Washington v. Gunther*, the Court clarified that claims of wage discrimination brought under Title VII were not limited to equal pay for the exact same work, as they are under the Equal Pay Act.

[5] Only Indiana and North Carolina do not offer any protections against discrimination based on pregnancy discrimination. In Texas and 13 other states, employers, by law, must provide reasonable accommodations for pregnant workers. Oregon and 18 other states have passed laws providing workplace breastfeeding rights (such as break times and a private space for pumping breast milk). South Dakota, Nevada and Alabama provide that employers must allow pregnant employees to take sickness or disability leave owed to them for pregnancy-related conditions.

16. The Lilly Ledbetter Fair Pay Restoration Act (2009)[6] and Executive Order 13665 (2014) promote pay transparency and provide more effective procedures for challenging unequal pay.

Education

17. Title IX of the Education Amendments of 1972 prohibits sex discrimination in federally funded educational programmes.

Same-sex marriage

18. In its 2015 landmark decision in *Obergefell v. Hodges*, the Supreme Court recognized same-sex marriage as a constitutional right under the Fourteenth Amendment to the Constitution.

Right to health

19. The adoption of the Affordable Care Act in 2010 expanded access to health care for many uninsured citizens, with the biggest gains for the poor, minorities and low-wage workers. The legislation marked significant progress in women's enjoyment of the right to health. The Act also established crucial protections against discriminatory practices by health insurance plans in terms of charges and coverage relating to women's reproductive health needs as well as provisions for coverage of provider screening and counselling for domestic violence.

Violence against women

20. The Violence against Women Act of 1994 as last reauthorized in 2013, is a key resource to prevent gender-based violence, specifically domestic violence, sexual assault, date violence and stalking (see A/HRC/17/26/Add.5 and Corr.1, paras. 67-71). There are also statutory protections at state and local levels. The last reauthorization of the Act created earmarked funding to support sexual assault response teams and to train law enforcement officers and prosecutors in how to deal with sexual assault, and explicitly barred discrimination based on gender identity or sexual orientation

21. The Working Group also notes the adoption in 2012 of the National Standards to Prevent, Detect, and Respond to Prison Rape, pursuant to the Prison Rape Elimination Act (2003).

22. The experts welcome the significant legislative and judicial measures taken in the past decades aimed at eliminating discrimination and violence against women. Nonetheless, the Working Group notes that significant gaps remain in many of these legal frameworks and makes recommendations for further measures to guarantee gender equality in the workplace, in family status, in the right to health and as regards violence against women.

3. Challenges

Absence of an equality provision in the Constitution

23. The Working Group regrets that political resistance has consistently blocked efforts to pass an equal rights amendment, which would entrench women's right to equality in the Constitution. Constitutional guarantee is considered by leading human rights experts as crucial to secure women's right to equality and is included in almost all

[6] See https://nwlc.org/resource/lilly-ledbetter-fair-pay-act-0.

constitutions globally. According to a poll in 2012, 91 per cent of people in the United States think that the Constitution should include equal rights for men and women.[7]

24. An equal rights amendment is also essential to demonstrate genuine political will to attain substantive equality between women and men, to pre-empt legislative reversal of gains made in the protection of women's right to equality and to further strengthen the review power of the Supreme Court to strike down discrimination against women.

Marital status

25. Family law is the prerogative of the states; there are therefore numerous laws relating to marriage across the country.[8] Most states set the age of marriage at 18 without parental consent and 16 with parental consent and under certain conditions. Mississippi is the only state where women can marry without parental consent at the age of 15, and men at 17.[9]

26. Although polygamy has been illegal in all states since 1862 (Morrill Anti-Bigamy Act), some cases of polygamy have been reported, especially in Utah and Colorado. However, in December 2013, a District Court in Utah ruled, in the case *Brown v. Buhman*, that Utah's anti-polygamy law was unconstitutional on the basis of the First Amendment to the Constitution which guarantees, among other rights, religious freedom.

Guns and gender-based violence

27. A series of federal and state laws have aimed at keeping guns out of the hands of the most dangerous domestic violence offenders. The strongest state laws prohibit domestic abusers and stalkers from buying or possessing guns, require background checks for all gun sales and create processes to ensure that abusers and stalkers surrender the guns already in their possession. However, federal prohibitions apply to abusers who are currently or formerly married to their victims and those who live with or formerly lived with their victims, but do not prohibit dating partners or misdemeanant stalkers from buying or possessing guns. The experts regret that existing regulations have done little to curb the problem of guns and their role in violence against women, in particular intimate partner homicides, but welcome the actions announced by the executive in January 2016 to reduce gun violence by increasing background checks for purchasers.

Rights to reproductive and sexual health

28. The experts regret that throughout the years, women in the United States have seen their rights to sexual and reproductive health significantly eroded. Since the 1973 decision by the Supreme Court in *Roe v. Wade* that a woman has a constitutional right to choose to terminate a pregnancy in the first trimester prior to viability,[10] other Supreme Court decisions have opened the door to, inter alia, greater state regulation of abortion, barring abortion counselling and referral by family planning programmes funded under Title X of the federal Public Health Service Act; establishing the "undue burden test" providing that state regulations can survive constitutional review so long as they do not

[7] In 1972, the Equal Rights Amendment was passed by Congress with a seven-year deadline for ratification by the states (to enter into force, an amendment to the Constitution requires ratification by three quarters of the states (i.e., 38 out of 50). That number was never reached. See Jessica Neuwirth, *Equal Means Equal: Why the Time for an Equal Rights Amendment is Now* (New Press, 2015).

[8] See www.law.cornell.edu/wex/table_marriage.

[9] Mississippi Code (2013), Title 93, para. 93 1-5. Available from http://law.justia.com/codes/mississippi/2013/title-93/chapter-1/section-93-1-5/.

[10] See www.aclu.org/timeline-important-reproductive-freedom-cases-decided-supreme-court.

place a "substantial obstacle in the path of a woman seeking an abortion of a nonviable foetus"; and deciding that lawmakers can overrule a doctor's medical judgment and that the "State's interest in promoting respect for human life at all stages in the pregnancy" can outweigh a woman's interest in protecting her health.[11] Women's rights to sexual and reproductive health are constantly being challenged.

29. At the time of writing, the Supreme Court was reviewing a case (*Whole Woman's Health v. Hellerstedt*)[12] which had major implications for the future of access to essential reproductive health care in the United States. The expert group deeply hopes that this decision will reinstate the fundamental right of women to access reproductive and sexual health services in accordance with their constitutional rights.[13] The Working Group is also concerned that the Supreme Court's recognition, in the *Hobby Lobby* case,[14] of an exemption from the obligation of an employer to provide insurance that included contraception on the grounds of freedom of religion will deprive some women of the possibility of accessing contraceptives. A similar case, *Zubik v. Burwell*, concerning contraception and religious refusals, was also being heard by the Supreme Court.[15]

30. Furthermore, the Working Group deplores the adoption in 1973 of the Helms Amendment to the Foreign Assistance Act,[16] which was intended to prohibit foreign aid extended by the United States from being used to pay for the use of abortion "as a method of family planning", but is being used to justify a complete ban on using those funds for abortions, even when a pregnancy is a result of rape or incest or when a pregnancy is a threat to the life of a woman or girl. The Working Group also regrets the adoption in 1976 of the Hyde Amendment prohibiting the use of certain federal funds for abortions except in cases of rape, incest or preserving the life of the mother.

Social and economic rights

31. The Working Group regrets the important gaps in the legal framework which prevent women in the United States from fully enjoying their economic and social rights, including their equal right to work.

B. Access to justice

32. The courts play a central role in determining women's ability to enjoy and exercise the rights accorded to them by law. In the United States, there has been an increase in awareness of the need for gender diversity and gender-sensitive adjudication in judiciaries. Since the beginning of his mandate, the President has appointed more than 130 women judges. The Supreme Court has three women among its nine justices, for the

[11] See e.g. *Webster v. Reproductive Health Services* (1989); *Rust v. Sullivan* (1991); *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992); *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood Federation of America, Inc.* (Carhart II) (2007).

[12] See the communication in A/HRC/29/50, p. 54.

[13] Editor's note: on 27 June 2016, the Supreme Court struck down a Texas law designed to shut down most of the state's abortion clinics by imposing medically unnecessary restrictions.

[14] *Burwell v. Hobby Lobby Stores, Inc.* (2014).

[15] Editor's note: on 16 May 2016, the Supreme Court, without deciding on the merits, unanimously decided to remand the case to the lower courts.

[16] See http://plannedparenthoodaction.org/community/planned-parenthood-global/helms-amendment-hurts-women-worldwide.

first time in its history.[17] Of the 170 active judges currently sitting on the 13 federal courts of appeal, 60 are women (35 per cent).[18]

33. A severe problem for women litigants is access to justice: free legal counsel and aid are not systematically available for women living in poverty, and when legal aid is partially provided to the most destitute, it is allegedly of very poor quality. The experts hope that the White House Legal Aid Interagency Roundtable established in September 2015 will propose concrete solutions and have an adequate budget to address this gap.

34. The institution of the class action, which has allowed large numbers of women to access compensation for discrimination or injury caused by powerful corporations, is being eroded, with particular impact on women's legal resources for fighting gender discrimination, as demonstrated in the Supreme Court's rejection in 2013 of a class action suit against Wal-Mart Stores Inc. for discrimination, brought on behalf of about one million female workers. The justices held that the petitioners had failed to identify a common corporate policy that had led to gender discrimination against workers at thousands of Wal-Mart and Sam's Club stores across the country.

35. The Working Group also remains concerned at the particular difficulties faced by Native American women in accessing justice. The nature of the interaction between federal, state and tribal jurisdictions has meant that crimes committed by non-indigenous men on reservations often go unpunished. To address this situation, in July 2010, the Tribal Law and Order Act was passed with the aim of clarifying responsibilities and increasing coordination among the various law enforcement agencies.[19] The reauthorization of the Violence against Women Act in 2013 was an attempt to remedy the criminal justice response to violence against Native American women. However, the Working Group received reports that these laws are not being fully and effectively implemented, resulting in a persistent failure of the justice system to respond adequately to acts of violence against Native American women (see CERD/C/USA/CO/7-9 and A/HRC/17/26/Add.5 and Corr.1).

36. The experts recommend that the issue of substantive equality for women in court proceedings be revisited and reinvigorated and that access to justice for all, with adequate legal representation, be regarded as a civil right which, where necessary, should be publicly funded.

C. Institutional framework and policies at the federal level

1. Institutional framework

37. The Government has considerably strengthened the institutional structure to promote women's rights and gender equality, including through the White House Council on Women and Girls and the White House Advisor on Violence against Women, which have reinforced the Civil Rights Division and the Office on Violence against Women within the Department of Justice; and the Office on Women's Health,[20] the Family Violence Prevention and Services Division and the Office of Minority Health within the Department of Health and Human Services. Other departments and federal entities also play a key role such as the Department of Labor, the Equal Employment Opportunity Commission, the Office of Personnel Management and the Commission on Civil Rights.

[17] Only 4 of the 112 justices who have served on the Supreme Court have been women.

[18] See https://nwlc.org/resources/women-federal-judiciary-still-long-way-go/.

[19] United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), *Progress of the World's Women 2011-2012: In Pursuit of Justice*, p. 73.

[20] Conducting gender-mainstreamed research.

38. The Working Group observed during its visit that federal and state authorities had very limited knowledge of international human rights standards and mechanisms. It regrets that no national human rights institution has been established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).[21] The Working Group notes that six inter-agency working groups exist, under the leadership of the White House, to coordinate the review of the recommendations of the universal periodic review and concluding observations of treaty bodies, but regrets the absence of a mechanism which would coordinate and monitor the implementation of the recommendations of special procedures mandate holders.

2. Policies

39. The Working Group acknowledges that the promotion of gender equality and the empowerment of women and girls has been at the forefront of the current administration's policies. Indeed, the Government has been working to combat discrimination, eliminate violence against women and girls, expand access to women's health care, including sexual and reproductive health and rights, support women-owned businesses and women entrepreneurs and encourage women's economic and political leadership.[22] Several of these policies are detailed in the Government's report on the implementation of the Beijing Declaration and Platform for Action.[23]

III. Participation of women in political and public life and in economic and social life, and access to health

A. Participation in political and public life

40. Despite the current administration's commitment to advancing women's rights, adequate representation for women in political life is far from being achieved and, indeed, only 4 out of 15 Cabinet members are women.

41. Women hold 19.4 per cent of the seats in the House of Representatives and 20 per cent in the Senate. Between 2004 and 2015, the number of women in the Senate increased from 14 to 20 and the number of women in the House grew from 60 to 84. This represents the highest level of legislative representation ever achieved by women in the United States. However, it still puts the country at only 96 in the global ranking.[24] Women of colour make up 7.4 per cent (32 of 435 representatives) of the House. There is only one woman of colour serving in the Senate,[25] but not a single African-American woman.

42. Only six states have female governors: New Hampshire, New Mexico, Oklahoma, Oregon, Rhode Island and South Carolina. The share of state senate seats held by women is largest in Arizona (43.3 per cent) and smallest in South Carolina (2.2 per cent). The share

[21] The Commission on Civil Rights has the authority to undertake many of the monitoring activities of a national human rights institution, including the power to convene hearings, issue reports and make recommendations to Congress and the executive branch, but it is not fully in accordance with the Paris Principles.

[22] See www.whitehouse.gov/the-press-office/2015/09/27/fact-sheet-promoting-gender-equality-and-womens-empowerment.

[23] See www.unece.org/fileadmin/DAM/Gender/Beijing_20/United_States_Beijing_20_Review.pdf.

[24] See www.ipu.org/wmn-e/classif.htm.

[25] Mazie Hirono of Hawaii.

of seats in the state house or assembly held by women is largest in Colorado (46.2 per cent) and smallest in Oklahoma (12.9 per cent).[26]

43. According to several of the interlocutors whom the Working Group met during its visit, the low level of representation of women in elected political posts is due partly to the greater difficulties women face in fundraising for campaigns. The financing of political campaigns has increasingly played a major role in recent decades and has drastically altered the landscape of elections and political participation. The experts observed that women's difficulty in fundraising is considered to result from complex causes. In particular, it is a result of exclusion from the predominantly male political networks that promote funding. Interlocutors also attribute women's low rate of election to negative stereotypes and biased presentation of women in the media, which adversely affect both women's fundraising ability and their political candidacy. The experts consider the objective difficulties women face in raising campaign funding to be a serious limitation on women's opportunities for political representation, and are deeply concerned that the removal of limits on campaign contributions by the Supreme Court in 2014 threatens to exacerbate this situation.

44. In this regard, the Working Group welcomes the initiatives undertaken by states and cities that have started programmes for public financing of campaigns. One method, which its supporters call "Clean Money, Clean Elections", gives each candidate who chooses to participate a fixed amount of money. Some interlocutors have pointed out that, in order to effectively give women an equal chance, competing private funding would have to be restricted. The Working Group encourages the efforts deployed by voluntary organizations, such as Emily's List, which promote women candidates. The Working Group recalls that, in accordance with international human rights standards, temporary special measures have been adopted in many democratic countries to ensure more adequate representation of women in politics.

45. Furthermore, while more women currently vote than men,[27] it is essential to ensure that women continue to have access to the voting booth. Today, a patchwork of state laws is making it more and more difficult to exercise the right to vote. For instance, officials in Ohio, Texas and North Carolina have manipulated rules to keep part of the population away from the polls. The Working Group welcomes the efforts deployed by the League of Women Voters which has, for instance, successfully challenged the Florida state legislature for redrawing congressional districts for a particular party's benefit.[28] The Working Group is concerned that changes in voter identification laws, such as those in Alabama, which increase bureaucratic requirements for voter identification, are particularly problematic for women who have changed their name after marriage, and reductions in the number of voting centers can make registration and voting less accessible for the poor, a majority of whom are women. A counter example and good practice is the State of Oregon, which has facilitated voter registration and voting by mail.

B. Participation in economic and social life

46. Women's participation in the workforce has played a key role in the country's economic growth in the last decades. Women constitute nearly half of the labour force in the United States, and 57 per cent of women are labour force participants. Mothers are more likely to provide significant financial support to their families than ever before,

[26] Cynthia Hess and others, *Status of Women in the States: 2015* (Institute for Women's Policy Research, 2015).

[27] Ibid.

[28] Neuwirth, *Equal Means Equal*.

with nearly two thirds of women being primary or co-breadwinners for their families.[29] Among dual-earner couples, 29 per cent of women earned as much as or more than their husbands. Women today are more likely than men to graduate from college, and are as likely to obtain advanced degrees.[30]

47. However, while women have made great achievements in education and have increased their workforce participation, the Working Group is concerned that their crucial labour force participation and educational achievements are not accompanied by equal economic returns, especially as reflected in the wage gap and the high numbers of women earning the minimum or beneath minimum wage. It notes that, in practice, discrimination against women in employment continues; women's work is valued less and provides less favourable terms and conditions of work, including salary and promotion. Furthermore, it considers that, despite the prohibition of discrimination in employment and the establishment of the Equal Employment Opportunity Commission, the legal system does not provide women with a level playing field, failing to secure the workplace accommodations necessary for women to fulfil both reproductive and productive roles.

48. The Working Group regrets the persistence of a corporate culture that perpetuates gender stereotypes. The Working Group was informed that women own over one third of the firms in the United States, most of them small and medium-size businesses, and that these businesses face greater barriers in obtaining low-cost capital from sources such as the Small Business Administration and clearly need support to achieve equal economic potential. The federal Government has a stated goal of awarding 5 per cent of federal contracts to women-owned businesses;[31] it is reported that this goal was reached for the first time only in 2015.[32]

49. The Working Group recognizes the gains for women's equal opportunity in employment made under the equal protection guarantees of the Fourteenth and Fifth Amendments and the prohibition against employment discrimination contained in Title VII of the Civil Rights Act of 1964. It also appreciates the decisions of the Supreme Court in sex discrimination cases in which the Court has rejected the use of gender stereotypes and recognized the legitimacy of affirmative action and the discriminatory effect of sexual harassment and gender hostility in the workplace. However, in another of its decisions, the Court has made it more difficult for women to prove discrimination. In equal protection cases under the Fourteenth Amendment, the Court has traditionally applied intermediate scrutiny rather than strict scrutiny. In Title VII cases, the Court has developed two principal models for proving claims of employment discrimination. The "disparate treatment" model focuses on an employer's intent to discriminate. Alternately, the "disparate impact" model, a facially neutral employment practice, may violate Title VII even if there is no evidence of an employer's intent to discriminate. Both models require the plaintiff to establish a prima facie case of discrimination, and the burden then shifts to the employer to articulate a defence. Ultimately, however, the plaintiff retains the burden of persuasion to establish that the employer's assertion of a legitimate, non-discriminatory reason for its actions was a mere pretext. The Supreme Court has also recently circumscribed the effectiveness of using class action suits in employment discrimination claims (see para. 33).

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[29] See research by Heather Boushey, Executive Director and Chief Economist at the Washington Center for Equitable Growth and Senior Fellow at the Centre for American Progress, available from https://heatherboushey.com/writing-and-testimonies/.

[30] See www.unece.org/fileadmin/DAM/Gender/Beijing_20/United_States_Beijing_20_Review.pdf.

[31] United States Women's Chamber of Commerce.

[32] https://www.sba.gov/content/sba-federal-government-breaks-contracting-record-women-owned-small-businesses.

50. The gender wage gap is 21 per cent, and during the last decade little improvement has been made in closing it despite the Equal Pay Act of 1963. Research has shown that a woman working every year between the ages of 25 and 65 will have lost $420,000 over her working life because of the earnings gap.[33] Education increases women's earnings but does not eliminate the gap, which is in fact larger for those with the highest levels of educational attainment. In her lifetime, a woman with an advanced degree in such fields as law or medicine can expect to earn $2 million less than her male peers.[34] The wage gap affects women's income throughout their lives, affecting their financial security and independence and increasing pension poverty.

51. The wage gap may be attributed both to vertical discrimination in wage scales and to horizontal discrimination as a result of a gender-segregated labour market. In order to address the latter, international human rights standards require equal pay for work of equal value. However, in the United States, neither federal nor state equal pay laws have required equal pay for work of equal value. Exceptionally, California has now set a precedent with the California Fair Pay Act of 2015, which legislates the right to equal pay for work of equal value.

52. Women's earnings also differ considerably by ethnicity: African-American, Native American and Hispanic women have the lowest earnings. Across the largest racial and ethnic groups in the United States, Asian/Pacific Islander women have the highest median annual earnings, at $46,000,[35] followed by white women ($40,000). Native American and Hispanic women have the lowest earnings, at $31,000 and $28,000, respectively. Data also indicate that women of colour are less likely to attain a bachelor's degree or higher than other women.[36]

53. The expert group is concerned that, although the Pregnancy Discrimination Act of 1978 established that pregnancy discrimination is sex discrimination under Title VII, between 1997 and 2011, the number of pregnancy discrimination complaints filed with the Equal Employment Opportunity Commission increased by 46 per cent and pregnant women have largely continued to lose their requests for remedy.[37] The experts hope that the 2014 guidelines issued by the Commission and the decision of the Supreme Court in 2015 in *Young v. United Parcel Service*[38] will improve access to justice for pregnancy-related discrimination.[39]

54. The Working Group is appalled by the lack of mandatory standards for paid maternity leave, which is required in international human rights law. The Family and Medical Leave Act, which gives employees of companies with more than 50 employees the right to take unpaid, job-protected leave of 12 workweeks in a 12-month period, cannot be regarded as in lieu of paid maternity leave and falls far short of international human rights standards, which require that maternity leave must be paid leave for a minimum of 14 weeks; best practice is the provision of paid leave for fathers too. Some form of paid parental leave is provided by legislation in three states,[40] but only for six

[33] Neuwirth, *Equal Means Equal*.

[34] Hess, *Status of Women in the States*.

[35] For further disaggregated data showing incoming disparities among these ethnic subgroups, see www.dol.gov/wb/images/Asian_Pacific_Islander_Infographic.pdf.

[36] Ibid.

[37] See www.eeoc.gov/eeoc/statistics/enforcement/pregnancy.cfm.

[38] See www.supremecourt.gov/opinions/14pdf/12-1226_k5fl.pdf.

[39] The Commission reissued its Enforcement Guidance on Pregnancy and Related Issues in June 2015 to address the Supreme Court's decision in *Young*.

[40] California, New Jersey and Rhode Island. See www.whitehouse.gov/sites/default/files/docs/leave_report_final.pdf.

weeks and not at full pay. Attempts by the current administration to provide paid maternity leave for federal employees have not yet been successful.[41] The United States is one of only two countries in the world without mandatory paid maternity leave for all women workers.

55. The Working Group is also concerned at the unequal division of family caregiving work, demonstrated by the fact that women are nine times more likely than men to work part-time for family care reasons. Part-time work means lower earnings (and lower social security contributions); part-time workers are also much less likely to have access to paid leave of any kind or to benefit from employer contributions to employer-provided health insurance or pension plans. Women are also three times more likely than men to report having left their job because of caregiving responsibilities (6 per cent compared with 2 per cent, according to a survey of people aged 45-74 undertaken in 2013 by the American Association of Retired People). A study by MetLife (2011) estimated that women with caregiving responsibilities who were over the age of 50 would lose $324,044 in income and benefits over their lifetime if they completely exit the workforce for caregiving reasons.[42] The Working Group considers that the public budget should provide facilities for childcare and after-school care and facilities for the elderly and disabled that are affordable and accessible, to allow adults with care responsibilities—women and men—to work in full-time employment.

56. The percentage of women in poverty has increased over the past decade—from 12.1 per cent to 14.5 per cent—at a higher rate than for men; this has predominantly affected women of colour, single-parent families and older women. As noted previously by other United Nations experts, the subprime mortgage market disparately targeted the poor and, in particular, poor women, thus contributing to the increase in women's poverty.

57. The Working Group suggests that both federal and state governments address this problem urgently, by promoting employment for women, raising the minimum wage and eliminating the wage gap. Residual poverty should be addressed through the social security system and, given the country's economic strength, there should be a policy of zero tolerance for relegating people to poverty.

58. Furthermore, many stakeholders complained that minimum wages have lost value as a living wage. The majority of minimum wage earners are women working full time and as the sole source of income for their families. The Working Group regards the raising of the minimum wage to the level of a living wage to be one of the most appropriate ways both to reduce the wage gap and to reduce poverty among working women. The Working Group welcomes recent efforts by the Government in this regard.[43]

59. The Working Group is also concerned at the situation of the estimated 2.5 million domestic workers in the United States, According to the National Domestic Workers Alliance,[44] the overwhelming number of them are women, frequently immigrant women,[45] many of whom are undocumented. During their visit, the experts heard dreadful testimonies from workers in this group who were victims of verbal and physical abuse and wage theft.

In California, workers who qualify receive 55 per cent of their pay for six weeks, paid for by employee-financed public disability insurance.

[41] See www.whitehouse.gov/sites/default/files/docs/leave_report_final.pdf.

[42] Hess, *Status of Women in the States*.

[43] See www.unece.org/fileadmin/DAM/Gender/Beijing_20/United_States_Beijing_20_Review.pdf.

[44] Submission by the National Domestic Workers Alliance.

[45] See www.immigrationpolicy.org/just-facts/immigrant-women-united-states-portrait-demographic-diversity.

The Working Group welcomes the initiatives taken by civil society organizations to improve conditions for domestic workers through a domestic workers' bill of rights.[46] Wage theft also affects other low-income and migrant workers (such as those in manufacturing, construction and some service jobs). The Working Group welcomes the recent increase in the budget of the Wage and Hour Division within the Department of Labor to support investigations.

60. The Working Group recalls that international human rights standards require establishing social protection floors for core economic and social rights, providing paid maternity leave and taking all appropriate measures to produce de facto equality between all women and men in the labour market. It is not for the Working Group to suggest how these minimum standards should be achieved, but only to point out that the United States, the economic leader of the world, lags behind in providing a safety net and a decent life for those of its women who do not have access to independent wealth, high salaries or economic support from a partner or family.

C. Access to health care

61. The Working Group praises the cconsiderable progress achieved by the adoption of the Affordable Care Act. However, it regrets the absence of universal health insurance coverage. The experts also regret the decision of the Supreme Court to allow states to opt out from the expansion of their Medicaid thresholds, as foreseen by the Act.[47] Too many women pay a high price, sometimes with their lives, for this considerable coverage gap, which has strong regional and ethnic disparities. According to official data from 2015,[48] 28 per cent of the people living in poverty are still uninsured. This affects primarily women and, in particular, African-American and Hispanic women, who are thus prevented from accessing basic preventive care and treatments.

62. Furthermore, immigrants, including immigrant women, must wait five years before they can access Medicaid and undocumented migrants are completely excluded from health care, with the exception of emergency care, including labour and delivery and care available at community and migrant health centres and through HIV/AIDS and maternal and child health programmes. During their visit, the experts observed that Texas and Alabama do not allow immigrants lawfully residing in those states to enrol in Medicaid even after completing the federal waiting period of five years. The experts heard appalling testimonies of migrant women who had been diagnosed with breast cancer but could not afford the appropriate treatment. The Health Equity and Access under the Law (HEAL) for Immigrant Women and Families Act, currently before Congress, would expand access to health care for immigrants, particularly women and children. The Working Group also regretted to learn about the serious inadequacies of health-care facilities to treat women with disabilities, and calls for improvement in this regard.

63. The Working Group deplores the substantial disparities that persist in the prevalence of certain diseases, such as obesity, cancer and HIV/AIDs, according to ethnicity, sex and level of education.[49] Black women, for instance, experience the highest rates of hypertension and obesity compared with other ethnic group.[50] The experts also regret that

[46] See www.domesticworkers.org/ho.neeconomics/.

[47] *National Federation of Independent Business v. Sebelius* (2012).

[48] See www.cdc.gov/nchs/data/nhis/earlyrelease/insur201508.pdf.

[49] Centers for Disease and Control and Prevention, "CDC health disparities and inequalities report—United States, 2013", *Morbidity and Mortality Weekly Report*, Supplement, vol. 62, No. 3 (22 November 2013).

[50] Office of Minority Health, Data Brief No.4, November 2015.

the vast majority of lesbian, bisexual, transgender and intersex persons report having experienced discrimination by health-care providers, including refusal of care, harsh language and physical roughness.[51]

64. The experts are also concerned at the results of a study which showed that, after a period of consistent decline, the suicide rate among women increased between 1999 and 2014 from 4 per 100,000 population to 5.8. Suicide is a very worrying public health issue, and concerned authorities should address it urgently.[52]

Sexual and reproductive health

65. Women's empowerment is intrinsically linked to their ability to control their reproductive lives (A/HRC/32/44). The Working Group would like to recall that according to international human rights standards, including the Convention on the Elimination of All Forms of Discrimination against Women, which the United States has signed but not ratified, States must take all appropriate measures to ensure women's equal right to decide freely and responsibly on the number and spacing of their children, which includes women's right to access contraceptives.

66. The Working Group welcomes the requirement in the Affordable Care Act that new private health plans must cover contraceptive counselling, without out-of-pocket costs. Despite the Government's efforts, and a significant drop in teenage pregnancy, the Working Group remains concerned that the rate of teenage pregnancy is substantially higher than in other Western industrialized nations and that ethnic and geographic disparities in teen birth rates persist.[53]

67. The experts were informed that, being a prerogative of each state, there is no national policy on sex education and adequate and quality sex education in school. Oregon, for example, does provide sex education, but it is lacking in many curricula. According to interlocutors, in many schools only abstinence is taught in place of scientifically based sex education, which is a key element of health policy.

68. Although women have a right under federal law to terminate a pregnancy in various circumstances, including the constitutional guarantee under *Roe v. Wade*, ever-increasing barriers are being created to prevent their access to abortion procedures. Women's access to reproductive health services has been truncated in some states by the imposition of serious constraints. These take the form of unjustified medical procedures, such as compelling women to undergo ultrasounds or to endure medically unnecessary waiting periods; withholding early-pregnancy abortion medications; and imposing burdensome conditions for the licensing and operation of clinics resulting in the closing of clinics across the country, leaving women without access to sexual and reproductive health services. Furthermore, marketplace insurance coverage for the legal termination of pregnancy is far from universal. Thus, insurance will frequently not be available for women who wish to exercise their right to terminate their pregnancy in the first trimester. These restrictions have a disproportionate and discriminatory impact on poor women. As the experts observed during their visit to the Rio Grande Valley in Texas, one of the poorest regions in the country, immigrant women face severe barriers in accessing sexual and reproductive health services.[54] The adoption of the Woman's Health Protection Act would prohibit states from enacting unconstitutional restrictions on reproductive health-care providers that block

[51] Submission by Human Rights Campaign Foundation.

[52] See www.cdc.gov/nchs/products/databriefs/db241.htm.

[53] Seewww.cdc.gov/teenpregnancy/about/index.htm.

[54] See www.reproductiverights.org/document/nuestro-texas-the-fight-for-reproductive-health-in-the-rio-grande-valley.

access to safe and legal abortion services by requiring all hospitals to provide these services and insurance schemes to provide coverage for abortions, to which women have a right under United States law.

69. The Working Group is also concerned that an increasing number of states are targeting women's health providers for exclusion from key federal health programmes, including the Title X Family Planning Program, the Centers for Disease Control and Prevention programmes on sexually transmitted infections under section 318 (of the Public Health Service Act and Medicaid. At least 17 states have taken such action since 2011; 10 of these states have taken official action to block certain women's health providers, such as Planned Parenthood, from participating in Medicaid.

70. In addition, many of the clinics work in conditions of constant threats, harassment and vandalism, too often without any kind of protection from law enforcement officials, as the experts observed during their visits to Texas and Alabama. Alabama has a history of serious violence against abortion providers, including the killing in 1993 of Dr. David Gunn, the first doctor to be murdered for performing abortions in the United States. The massacre in the Colorado family planning centre that occurred just before the start of the visit once again demonstrated the extreme hostility and danger faced by family planning providers and patients. The experts are concerned at the stigma attached to reproductive and sexual health care, which leads to acts of violence, harassment and intimidation against those seeking or providing such care. The Working Group reminds the Government of its due diligence obligation and encourages it to investigate and prosecute violence or threats of violence occurring in this context.

71. The experts reiterate that the enjoyment of the right to freedom of religion or belief cannot be used to justify gender discrimination and, therefore, should not be used as a justification for hindering the realization of women's right to the enjoyment of the highest attainable standard of physical and mental health (ibid.). Laws on religious or conscience-based refusals to provide reproductive health care in the United States should be reconciled with international human rights standards. Refusal to provide sexual and reproductive health services on the grounds of religious freedom should not be permitted where such refusal would effectively deny women immediate access to the highest attainable standard of reproductive health care and affect the implementation of rights to which they are entitled under both international human rights standards and domestic law.

72. The Working Group expresses serious concern at the increase in the maternal mortality rate in the United States. According to the United Nations,[55] the rate increased by 136 per cent between 1990 and 2013. This global number hides distressing ethnic and socioeconomic disparities. African-American women are nearly four times more likely to die in childbirth. States with high poverty rates have a 77 per cent higher maternal mortality rate.[56] Concerned authorities should continue to elaborate adequate policies to address this issue.

73 The Working Group is surprised at the extremely high levels of cesarean deliveries in the United States (32.2 per cent of deliveries).[57] According to the World Health Organization, the ideal rate of caesarean sections should be between 10 per cent and 15 per cent. When medically necessary, a caesarean section can effectively prevent maternal and newborn mortality; however, when the rate goes above 10 per cent, there is no evidence that mortality rates improve.[58] The experts would encourage the concerned authorities to

[55] See http://apps.who.int/iris/bitstream/10665/112682/2/9789241507226_eng.pdf.
[56] See www.hrsa.gov/ourstories/mchb75th/mchb75maternalmortality.pdf.
[57] See www.cdc.gov/nchs/fastats/delivery.htm.
[58] See www.who.int/reproductivehealth/publications/maternal_perinatal_health/cs-statement/en/.

address this issue carefully and take measures to prevent the performance of caesarian sections for non-medical reasons.

74. The Working Group welcomes the progressive policies introduced by several states to promote access to reproductive and sexual health care. A 2014 report[59] provides a compendium of proactive policy solutions on reproductive health issues ranging from access to contraception and termination of pregnancy to promoting comprehensive sexuality education and improving maternal health. Its author recommends that these solutions be widely adopted. The Working Group also notes with satisfaction the law passed in 2015 in Oregon that allows pharmacists to prescribe contraceptives, thus facilitating access to family planning measures.

IV. Gender-based violence and women victims of multiple forms of discrimination

75. Despite the considerable efforts deployed in the past two decades at the legal, institutional and policy levels and some positive achievements to prevent and respond to gender-based violence, stakeholders have unanimously denounced the alarmingly persistent high levels of such violence in the United States.

Poverty and violence

76. The Working Group observed that poverty may result in homelessness, which exposes women to higher levels of violence and vulnerability. During the visit, interlocutors pointed out that victims of domestic violence were often among the homeless, either because they had been evicted as a result of the violence or because they had fled from their violent partner. Solutions should include effective protection orders, increased availability of shelters, housing support, and prioritizing eligibility for aid for single-mother households and those facing heavy unpaid care burdens.

Gun violence

77. The Working Group is troubled at the persistent, fatal consequences for women of the lack of gun control, in particular in cases of domestic violence. Women in the United States are 11 times more likely to be murdered with a firearm than women in other high-income countries. Over the past 25 years, more intimate partner homicides have been committed with guns than with all other weapons combined. When a gun is present in a domestic violence situation, it increases the risk of homicide for women by 500 per cent. In 35 states, persons convicted of domestic violence misdemeanours or subject to restraining orders are not prohibited from acquiring guns. Federal law (and the law in most states) allows domestic abusers and stalkers to easily evade gun prohibitions by purchasing guns from unlicensed, private sellers. Forty-one states do not require all prohibited domestic abusers to relinquish guns they already own.[60]

Minority women

78. The Working Group is deeply concerned at the disproportionate number of women from ethnic minorities, particularly African-American, Native American and

[59] See www.reproductiverights.org/document/moving-in-a-new-direction-a-proactive-state-policy-resource-for-promoting-reproductive-heal.

[60] EVERYTOWN for Gun Safety, "Guns and violence against women: America's uniquely lethal domestic violence problem", 16 June 2014.

immigrant women, who are subjected to heightened levels of violence, including rape and sexual violence (see CERD/C/USA/CO/7-9 and A/HRC/17/26/Add.5 and Corr.1). Relevant authorities stressed the difficulties in obtaining accurate data on various immigrant and refugee communities, who may fear reporting to law enforcement officials. Indigenous women are more than twice as likely as all other women to be victims of violence, and one in three of them will be raped during her lifetime. It is estimated that nearly 80 per cent of the rapes of indigenous women are by non-indigenous men (A/HRC/21/47/Add.1). The experts also deplore reports of police brutality and the increased number of homicides of African-American women by the police.[61]

79. Lesbian, bisexual, transgender and intersex persons face heightened exposure to hate crimes and physical violence. Sexual orientation-based hate crimes made up about 21 per cent of hate crimes reported by law enforcement in 2013 to the Uniform Crime Reporting Program of the Bureau of Justice Statistics. This percentage is probably an underestimate given that a number of lesbian, bisexual, transgender and intersex survivors of hate violence may not report their abuse to the police.[62]

Migrant women in detention centres

80. The Working Group is extremely concerned at the situation of migrant women in detention centres,[63] in particular women with minor children who are in prolonged detention. According to the information received, some detention facilities are not complying with federal mandates and agency policies. Regarding women seeking asylum,[64] the Commission on Civil Rights noted that the expedited removal process was fundamentally unfair as it did not afford detained immigrants the proper ability to obtain counsel and that the process should be improved to ensure that those who genuinely feared persecution could exercise their right to seek asylum in the United States. The Working Group also received allegations of sexual abuse and assault of women detainees, as well as mistreatment by Customs and Border Protection officials. Migrant women are often victims of trafficking and violence, including sexual violence, during their journey to the United States. The experts received complaints that appropriate health-care services were not systematically provided to these women in a timely manner, despite the horrifying physical and emotional ordeals they endured and in violation of detention standards. The experts also received complaints of migrant transgender women being mistreated in detention and often wrongfully placed with males.

Incarcerated women

81. The Working Group shares the concerns expressed by the Special Rapporteur on violence against women, its causes in consequences in the report on her visit to the United States (A/HRC/17/26/Add.5 and Corr.1) regarding women in detention (overincarceration, sexual violence, shackling of pregnant women, solitary confinement, lack of alternatives to custodial sentences for women with dependent children, inappropriate access to health care and inadequate re-entry programmes). The Working Group is also concerned at the negative effects of the Prison Litigation Reform Act on the ability of prisoners to seek protection of their rights; the Act requires prisoners to

[61] See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCSS%2fUSA%2f18555&Lang=en.

[62] Ibid.

[63] See www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf.

[64] Ibid.

exhaust all internal complaint procedures before bringing an action in federal court. While welcoming the adoption of the National Standards to Prevent, Detect, and Respond to Prison Rape, pursuant to the Prison Rape Elimination Act (2003), the Working Group expresses serious concern at reports that their implementation at the state level continues to be a substantial challenge.

Women in prostitution/sex workers

82. The criminalization of women in prostitution/sex workers in most of the country exposes them further to violence, places them in a situation of injustice, vulnerability and stigma and is contrary to international human rights standards. As the Committee on the Elimination of Discrimination against Women has systematically reiterated, women should not be criminalized for being in a situation of prostitution. Furthermore, as stipulated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), efforts should be deployed to discourage the demand that fosters all forms of exploitation of women.

V. Conclusions and recommendations

A. Conclusions

83. The Working Group greatly appreciates the invitation by the Government of the United States for the visit, which opened the door to an open and frank exchange regarding both good practices and gaps in women's enjoyment of their human rights in the United States.

84. The experts are of the opinion that, in a global context, women in the United States do not take their due place as citizens of the world's leading economy, which has one of the highest per capita incomes. In the United States, women are left behind in terms of international standards as regards their public and political representation, their economic and social rights and their health and safety protections.

85. The experts welcome the genuine support expressed by the current administration for the cause of women's equality and its undertaking to ratify the Convention on the Elimination of All Forms of Discrimination against Women. However, the experts regret the failure to implement these aims. As many stakeholders have underscored, the extreme polarization of politics has profoundly affected the ability of the Government to ratify the Convention and to introduce measures to guarantee women's human rights.

86. At the domestic level, ratification of the Convention is essential in order to provide all women in the United States with the rights and protections guaranteed therein. It is a myth that women already enjoy all those rights and protections under United States law. There are "missing" rights and protections to which women would be entitled under the Convention, such as universal paid maternity leave, accessible reproductive health care and equal opportunity in standing for political election.

87. The United States, which is a leading State in terms of formulating international human rights standards, is allowing its women to lag behind in the respect for these standards. While all women are victims of these "missing" rights, women who are poor; Native American, African-American, Hispanic and Asian

women; women who are members of ethnic minorities; migrant women; lesbian, bisexual, transgender or intersex persons; women with disabilities; and older women are in a situation of heightened vulnerability.

88. The ability to address these challenges is limited by a range of factors. Such obstacles include lack of political will to pass essential legislation; women's limited representation in leadership positions in Congress and in business; a strong conservative religious lobby which opposes reproductive rights; gun lobbies which oppose gun control; and discriminatory gender norms perpetuating a culture that allows discrimination against women to flourish. Women's underrepresentation and negative representation in the media also present major challenges and reinforce existing gender biases.

B. Recommendations

89. In a spirit of cooperation and collaboration, the Working Group makes the following recommendations to the federal and state authorities, as relevant, with a view to strengthening measures designed to guarantee gender equality, the empowerment of women and the promotion and protection of women's human rights.

Legal framework

90. With regard to the legal framework, the Working Group recommends:

(a) Ratifying the Convention on the Elimination of All Forms of Discrimination against Women;

(b) Adopting an equal rights amendment which would entrench women's right to equality in the Constitution;

(c) Reinforcing existing legislation in order to eliminate all forms of sex discrimination in employment, to pre-empt restrictive interpretation of the laws which prejudice women's access to remedies and to allow class action suits for employment discrimination claims on the basis of overall data against large corporations;

(d) Amending the Equal Pay Act to include the right to equal pay for work of equal value, with the implementation provisions recommended in the report of the Working Group submitted to the Human Rights Council at its twenty-sixth session, in 2014 (A/HRC/28/28);

(e) Mandating 14 weeks of paid maternity leave for all women workers in public and private employment, taking into account that best practice is payment from a social security fund which does not impose a direct financial burden on employers;

(f) Ratifying the ILO Domestic Workers Convention, 2011 (No. 189) and applying its provisions to ensure that domestic work is decent work;

(g) Making sure that women can, in practice, exercise their existing constitutional right, reaffirmed in *Roe v. Wade*, to choose to terminate a pregnancy in the first trimester;

(h) Ensuring that the provisions of the Affordable Care Act regarding insured access to contraceptives are universally enforced;

(i) Repealing the Helms Amendment and, in the meantime, issuing an executive order clarifying the scope of the existing legislation and clarifying women's right to insured reproductive health care for termination of pregnancy in cases of risk to life or to health (physical and mental), a pregnancy resulting from rape or other unlawful intercourse, teenage pregnancy or severe fetal impairment;

(j) Repealing the Hyde Amendment;

(k) Adopting the Woman's Health Protection Act;

(l) Disallowing conscientious objection by health-care personnel, providers and insurers to performing procedures to which women are legally entitled and for which there is no easily accessible, affordable and immediate alternative health provider;

(m) Expanding access to health care for immigrants via, for instance, the adoption of the Health Equity and Access under the Law (HEAL) for Immigrant Women and Families Act;

(n) Ensuring that women in prostitution/sex workers are not criminalized;

(o) Amending gun control laws to effectively protect women against gun violence;

(p) Changing laws to ensure that the legal age of marriage is 18, in all cases, for both women and men.

Access to justice

91. **With regard to access to justice, the Working Group recommends:**

(a) Ensuring further gender diversity and gender-sensitive adjudication in judiciaries;

(b) Revisiting and reinvigorating substantive equality for women in court proceedings and ensuring access to justice for all without discrimination, with adequate legal representation regarded as a civil right which, where necessary, should be publicly funded;

(c) Ensuring systematic accountability in cases of police brutality, noting in particular the frequency of police brutality against African-American women;

(d) Empowering Native American tribes to ensure justice in their communities through the exercise of full criminal jurisdiction within their lands;

(e) Ensuring the implementation of the National Standards to Prevent, Detect, and Respond to Prison Rape.

Institutional framework

92. **Regarding the institutional framework, the Working Group recommends:**

(a) Establishing an independent human rights institution in compliance with the Paris Principles, which should include a woman's rights commission;

(b) Establishing a high-level inter-agency working group on human rights implementation with a mandate to oversee and coordinate the implementation of the human rights obligations and commitments of the United States domestically, including the implementation of the recommendations of special procedures mandate holders.

Policies

93. **With regard to public and political life, the Working Group recommends:**

(a) **Applying temporary special measures to ensure gender equality in public and political representation, at both the executive and legislative branches, as well as in the judiciary;**

(b) **Introducing initiatives to encourage the participation of women in elected positions, including by provision of public funding for election campaigns.**

94. **With regard to economic and social life, the Working Group recommends:**

(a) **Developing policies to address occupational segregation, both vertical and horizontal;**

(b) **Providing facilities for childcare and after-school care and facilities for the elderly and disabled which are affordable and accessible to all women without discrimination, to allow adults with care responsibilities—women and men—to work in full-time employment;**

(c) **Raising the minimum wage to a living wage level;**

(d) **Facilitating access to capital and increasing the level of federal contract procurement for businesses owned by women, and taking measures to combat a corporate culture that perpetuates gender stereotypes;**

(e) **Ensuring that the Wage and Hour Division within the. Department of Labor undertakes proper investigations, and increasing supervision to hold employers who violate the rights of vulnerable women workers to account;**

(f) **Addressing the legacies of racism and persistent forms of racial discrimination and ethnic disparities in every sphere of life (inequalities in access to education, employment, housing and health care).**

95. **With regard to health, the Working Group recommends:**

(a) **Increasing funding of clinics under the Title X Family Planning Program in order to expand coverage for low-income women who lack insurance so they can access preventive care, including sexual and reproductive health services, and to reduce maternal mortality;**

(b) **Preventing politically motivated actions to exclude women's health providers from federally supported public health programmes;**

(c) **Taking additional measures to make contraception available and accessible at no cost, in particular for teenagers, with a view to combating teenage pregnancy;**

(d) **Considering reviewing the eligibility requirements for the public welfare system so that the basic human rights of immigrants, including the undocumented, are guaranteed, in particular access to health care for women and children;**

(e) **Addressing the root causes of increased maternal mortality, in particular among African-American women;**

(f) **Ensuring adequate, scientifically based sex education in school curricula;**

(g) Ensuring mandatory human rights education in schools, including the promotion of gender equality, the elimination of violence against women and harmful gender stereotypes as well as the legacy of slavery and racism;

(h) Combating the stigma attached to reproductive and sexual health care, which leads to acts of violence, harassment and intimidation against those seeking or providing reproductive health care, and duly investigate and prosecute violence or threats of violence;

(i) Taking steps to reconcile United States laws on religious or conscience-based refusals to provide reproductive health care with international human rights standards and to prohibit refusal to provide sexual and reproductive health services on the grounds of religious freedom where such refusal would effectively deny women immediate access to the highest attainable standard of health care, and to implement the rights to which women are entitled under both international human rights standards and domestic law.

96. **With regard to violence against women and safety, the Working Group recommends:**

(a) Implementing fully the Violence against Women Act of 2013;

(b) Ensuring effective protection orders, increased availability of shelters, culturally and linguistically responsive programmes and housing support, prioritizing eligibility particularly for single-mother households and those facing heavy, unpaid care burdens;

(c) Ending detention of migrant women with children and establishing accountability mechanisms and adequate gender-sensitive training of Customs and Border Protection officials;

(d) Seeking alternatives to custodial sentences for mothers of dependent children.

97. **With regard to women in the media, the Working Group recommends:**

(a) Strengthening the enforcement of the Federal Communications Commission Equal Employment Opportunity rules;

(b) Promoting the training of journalists regarding gender equality and women's rights, to try to combat harmful gender stereotyping in the media.